TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 28

ROBERT C. GILLIS, AS RECEIVER OF WESTERN OIL AND REFINING COMPANY, PETITIONER,

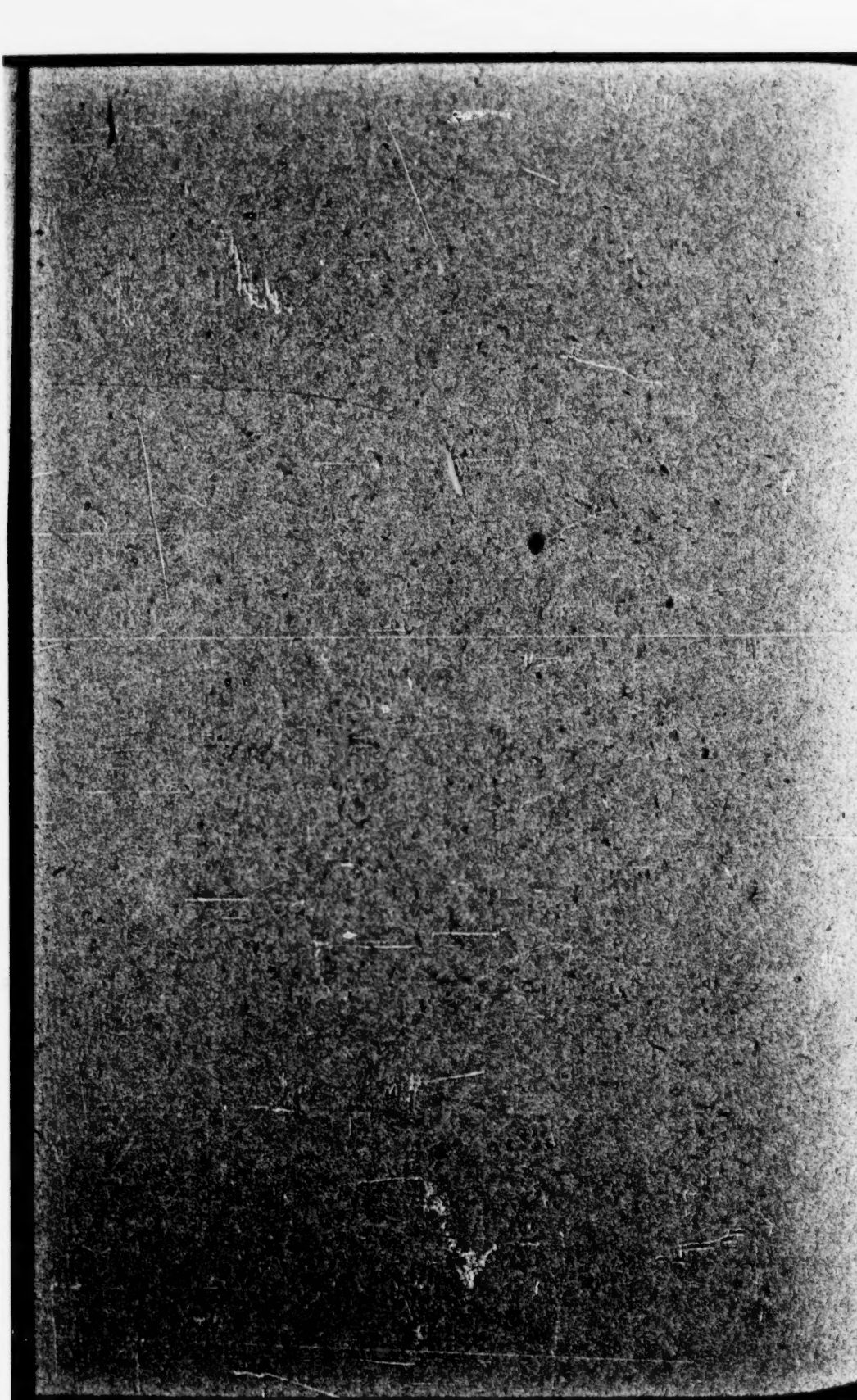
vs.

STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 27, 1934

CERTIORARI GRANTED MAY 28, 1934



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 20, 1934

—5113-C

[fols. a-2 & 3] Citation, in usual form, showing service on Goudge, Robinson & Hughes and Ernest C. Carman, filed July 26, 1933, omitted in printing.

[fol. 4]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

In Equity. No. T-89-M

OLAF HALVORSON, Complainant,

vs.

WESTERN OIL AND REFINING COMPANY, a Corporation, Defendant

APPLICATION OF RECEIVER FOR INSTRUCTIONS CONCERNING OPERATION AFTER TERMINATION OF BOND GIVEN BY RECEIVER TO STATE OF CALIFORNIA FOR PAYMENT OF GASOLINE TAXES—Filed June 8, 1933

To the Honorable the Judges of the District Court of the United States, Southern District of California, Central Division:

This Application of Robert C. Gillis as Receiver of Western Oil and Refining Company, defendant in the above entitled action, respectfully represents and shows to the Court:

I

That the undersigned Robert C. Gillis was duly appointed Receiver of Western Oil and Refining Company, defendant above named, on or about April 4, 1931; that he then qualified and assumed the duties of said office, and that ever since said date he has been and now is serving as such Receiver and carrying on operations as authorized and di- [fol. 5] rected by the said order appointing him Receiver and subsequent orders of this Court; and that in the discharge of his duties as aforesaid he has been, during all of said time, and still is, and hereafter during the continuance of said receivership necessarily will be, engaged in the business of manufacturing, refining and producing gasoline at the main refinery of said Western Oil and Refining

Company which is situated near Wilmington, at San Pedro Harbor, in the County of Los Angeles and State of California.

That he is advised by his counsel that this receivership constitutes and is what is commonly known as a receivership for conservation of assets; that said receivership has been definitely extended by this Court to December 31, 1933, and thereafter until the further order of the Court, for the purpose of conserving assets and permitting the Receiver and the creditors and stockholders of said Western Oil and Refining Company to work out and put into execution, under the direction of this Court, a suitable plan for reorganization of said Western Oil and Refining Company; to the end that the assets thereof shall not be needlessly sacrificed or dissipated but shall be preserved and appropriated in accordance with equity for the benefit of the parties interested therein and entitled thereto.

That the assets and properties of said receivership estate have a gross value, according to reliable appraisements thereof heretofore made and filed in the above entitled action in this Court, of approximately Three Million Dollars ($3,000,000.00) and a net value of approximately One Million Dollars ($1,000,000.00) after the payment and dis- [fol. 6] charge of all debts and liabilities owing to the creditors of said Western Oil and Refining Company and of the Receiver.

Reference is hereby made to the files, records and proceedings in the above entitled action; and this Application of the Receiver for instructions is based upon all of the facts appearing from said records, files and proceedings herein.

II

That shortly prior to the appointment of the Receiver as aforesaid the Legislature of the State of California enacted, and the Governor of said State approved, a certain act declared to be effective March 30, 1931, and thereafter published as Chapter 85, page 105, Statutes and Amendments to the Codes of California 1931, purporting to amend Chapter 267, Statutes and Amendments to the Codes of California 1923 and prior acts amendatory thereof; the same being entitled: "An act to regulate and license the business of producing, refining or distributing gasoline, distillate and other motor vehicle fuels, providing

for the collection and disposition of license taxes, prescribing penalties for violation of the provisions of said act, and repealing all acts and parts of acts inconsistent herewith," etc., which is commonly known as the State Gasoline Tax Act. That said act was supplemented by further amendments and provisions which are set forth in Chapter 86, page 119, of said Statutes and Amendments to the Codes of California 1931; Chapter 793, page 1652, of said Statutes and Amendments to the Codes of California 1931; Chapter 997, page 2001, of said Statutes and Amendments to the Codes of California 1931; Chapter 1082, page 2288, of said [fol. 7] Statutes and Amendments to the Codes of California 1931; and that the foregoing statutes and amendments constitute and are, as the Receiver is advised by his counsel, all of the legislation of the State of California relating to gasoline taxes. Reference is hereby made to said legislation for particulars and details thereof.

That, in general, as the Receiver is advised by his counsel, said above identified legislation of the State of California prohibits, or purports to prohibit, any person, firm, association or corporation from refining, manufacturing, producing or compounding motor vehicle fuel in the State of California and selling the same in said State unless and until a license so to do shall have been first procured from the State Board of Equalization of the State of California authorizing the same; that said legislation provides that no such license shall be issued by said State Board of Equalization until and unless the applicant therefor shall first furnish and deposit a bond executed by said applicant for such license as principal and by a corporation qualified under the provisions of Section 1056 of the Code of Civil Procedure of California as surety on said bond, with the penalty therein payable to the People of the State of California, and with such bond conditioned upon faithful performance of all the requirements of said legislation and expressly providing for the payment of all license taxes, penalties and other obligations of such applicant arising from said legislation. That the general purpose and conditions of such bond, as required by said legislation, was and is to guarantee the payment of gasoline taxes purporting to be fixed and established by said legislation in the sum of three cents per gallon upon all gasoline or other motor [fol. 8] vehicle fuel (as defined in said legislation) produced

by the licensee in the State of California. That by said legislation said State Board of Equalization is directed to require the applicant for such license to furnish such bond in the penal sum equal to twice the estimated amount of gasoline taxes accruing in one month, the said bond in no case to be less than one thousand dollars or more than one hundred thousand dollars; and provision being made whereby the licensee may pay said taxes weekly instead of monthly by giving such bond in amount equivalent to twice the amount of gasoline taxes accruing weekly on his production of motor vehicle fuel.

That said legislation, by its terms, provides and declares that the production of gasoline by any person, firm, association or corporation, or any officer or agent thereof, not having a license, issued after the giving of a bond, as hereinabove set forth, shall constitute and be a crime punishable by a fine of not less than five hundred dollars or more than five thousand dollars or by imprisonment in a county jail not exceeding six months or by both such fine and imprisonment; that the production of each unit of motor vehicle fuel without such license and the giving of such bond shall constitute and be a separate offense or crime, as above set forth; and that any gasoline or motor vehicle fuel so produced without such license and without the giving of such bond shall be subject to a penalty of one hundred per cent., thereby making the tax thereon six cents per gallon instead of three cents per gallon, and that such total taxes shall be immediately due and payable upon the coming into existence of the gasoline or motor vehicle fuel so produced without such license and bond, and shall be collected by the [fol. 9] state taxing authorities forthwith by distraint, seizure or force or any other method permitted by the legislature of said State of California; but that any person so producing such gasoline or motor fuel, after license granted and bond furnished as aforesaid, may make payment of said taxes in monthly installments for each month, the same to be payable on or before the first day of the second calendar month thereafter. That said legislation permits the deposit with the State Treasurer of the State of California of lawful money of the United States in the amount of the penalty of the bond required as aforesaid, or in lieu of cash, a like deposit of government or municipal bonds of market value equal to the amount of cash afore-

said; and that said legislation of the State of California, by its terms, does not make any other provision whereby or whereunder gasoline or motor vehicle fuel may be produced without such license given only after the furnishing of such bond, as hereinbefore set forth.

III

That the undersigned Receiver, promptly upon qualifying as hereinbefore set forth on or about April 4, 1931, did voluntarily comply with the requirements set forth in the above mentioned legislation of said State of California and did give a bond in the sum of One Hundred Thousand Dollars ($100,000.00) with Fidelity and Deposit Company of Maryland as surety thereon, and did accept a license to produce gasoline and motor fuel in the State of California, all in accordance with said legislation of said State hereinbefore described.

That within one month last past said Fidelity and Deposit Company of Maryland has given notice to this Receiver [fol. 10] and to the proper authorities of the State of California terminating its suretyship of the Receiver under said bond, such termination to be effective on or about June 28, 1933; and that said Fidelity and Deposit Company of Maryland has refused thereafter longer to continue as surety upon said bond. That upon receipt of such notice, the Receiver made application to National Surety Corporation (formerly National Surety Company) of New York requesting said surety corporation to become surety for the Receiver on a new bond to be substituted for the above mentioned bond now in force; that counsel for the Receiver went to the City of New York and conferred with the Chairman of the Board of Directors of said National Surety Corporation and urged said corporation to become surety on a new bond to be given by the Receiver, but that after due deliberation said National Surety Corporation refused and declined to become surety as aforesaid on any bond of the Receiver conditioned as provided by said legislation of the State of California; that thereafter the Receiver has made repeated efforts to procure a bond elsewhere, and to get other corporations qualified under Section 1056 of the Code of Civil Procedure of California to become surety on such bond of the Receiver, but that all such requests of the Receiver have been refused and the Receiver is advised and

believes that no corporation qualified under Section 1056 of the Code of Civil Procedure of California will, or can be induced to, become surety on any bond of the Receiver to the State of California conditioned as provided in said above mentioned legislation of said State unless the Receiver shall have deposited with, and shall thereafter continuously keep on deposit with, such surety corporation an [fol. 11] amount in cash equivalent to the penalty of such bond or shall withdraw from his working capital, from day to day, and deposit in a bank an amount of cash equal to the tax aforesaid of three cents per gallon upon his daily production of gasoline and shall not be at liberty to use the money so deposited in such bank either as working capital or for any other purpose pending the arrival of the due date for payment of such gasoline taxes, as provided in said legislation of the State of California.

IV

That immediaely after the above described situation arose the Receiver requested his attorneys to negotiate with the proper authority of the State of California for an adjustment whereby the operations of the Receiver would be continued despite the withdrawal of the Surety on his bond, as hereinbefore set forth. That thereupon, and in pursuance of such request, Goudge, Robinson & Hughes (Ernest C. Carman) as counsel for the Receiver addressed a letter to Hon. Ray L. Riley, Controller of the State of California, at Sacramento, California, he being the official of said State primarily charged with the duty of collecting gasoline taxes; that a true and correct copy of said letter is attached hereto, made a part hereof and marked Exhibit A.

The said State Controller merely acknowledged receipt thereof stating that the withdrawal by the surety on said Receiver's bond was a matter wholly within the jurisdiction of the State Board of Equalization to whom he had referred said letter of said attorneys for this Receiver.

[fol. 12] That thereafter, and under date of June 5, 1933, said attorneys for this Receiver did receive a reply from said State Board of Equalization, copy of which is attached hereto, made a part hereof and marked Exhibit B.

That accompanying said letter from said State Board of Equalization (as therein mentioned) was a copy of an opinion rendered to said Board by the Attorney General of Cali-

fornia under date of December 20, 1932, and that a true and correct reproduction of said copy of said opinion by the Attorney General of California is attached hereto, made a part hereof and marked Exhibit C.

That from said correspondence and said opinion by the Attorney General of California it appears that the said State Board of Equalization, and said other officials, do and will insist upon the undersigned Receiver complying with the provisions of said hereinbefore described legislation of the State of California and supplying a bond with corporate surety thereon as therein provided, notwithstanding the fact that it is wholly impossible for the Receiver to procure any such bond and he will be compelled either to operate without the same or to disobey the orders of this Court by not operating at all.

That the State of California has not provided, either in said tax legislation hereinabove mentioned or otherwise as the Receiver is advised by counsel, any method or manner in which or by which any corporation qualified under Section 1056 of the Code of Civil Procedure of California or otherwise can be compelled to become surety upon a bond of the Receiver to the State of California in any amount or upon any conditions whatsoever.

[fol. 13] V

That ever since the appointment of the Receiver on April 4, 1931, he has promptly paid to the State of California, on or before the due date thereof under the terms of said hereinbefore described tax legislation of said State, all taxes claimed by said State as accruing upon gasoline produced by said Receiver; that the total of said payments to said State of California have amounted during the period of this receivership, to the sum of $1,390,051.33, all of which has been promptly paid by this Receiver as aforesaid; that said gasoline taxes have amounted, during several months last past, to approximately $50,000.00 per month and probably will continue to accrue in such amount or more during the remainder of the period to which this receivership has been extended or may hereafter be extended; that the Receiver in the ordinary course of operations at all times has been, and he confidently believes that hereafter he will be, financially able to pay all such gasoline taxes accruing to the State of California at the correspond-

ing times and in the manner in which the same heretofore have been paid and hereafter will (or if the surety on said bond had not withdrawn would) become due. That the net assets of said receivership estate, as hereinbefore set forth, are many times in excess of the amount of gasoline taxes which has accrued during any two month period of said receivership or will accrue during any such period hereafter; and that there is no practical risk of non-payment of such taxes during the operation of this receivership under the orders and directions of this Court.

[fol. 14] VI

That the undersigned Receiver has operated said receivership during two years of business depression in which the trend was almost continuously downward, and the conditions almost continuously adverse, without sustaining on the whole of said operations any substantial loss or depletion of assets; and that the assets of said receivership in many respects have been improved and enlarged, and in no respect have deteriorated substantially other than by ordinary wear and tear and obsolescence, during the entire period of such receivership.

That of late, and particularly during some two months last past, general business conditions have improved and the trend thereof has been definitely turned and pointed upward; that the season in which the greatest use of gasoline as motor vehicle fuel, and the largest sales thereof by the Receiver, may be expected, in the year 1933 (to the end of which said receivership has been extended by order of this Court), is just now commencing, and that the prospects of operation by the Receiver without loss and with some profit during the remainder of said year 1933 are good.

That by reason of the conditions heretofore and until recently existing, it has been impractical or impossible for the Receiver and the creditors and stockholders of said Western Oil and Refining Company to work out and put into execution a practical plan for reorganization thereof, although work by the Receiver and a Creditors' Committee looking toward that end has been in diligent progress for several months last past; that the upward trend in business conditions hereinbefore described has greatly increased the prospect and probability of a suc-
[fol. 15] cessful reorganization or merger of said Western

Oil and Refining Company, and a consequent preservation and saving of the assets and business thereof from ruinous sacrifice, in accordance with the purposes of this Court in appointing the Receiver and continuing the receivership as hereinbefore set forth; and that the Receiver confidently believes that such merger or reorganization can and will be accomplished if the Receiver is permitted to operate, as heretofore he has done, until the end of the year 1933 or such other time as the Court may fix.

VII

That the Receiver cannot withdraw from his working capital the sum of $100,000.00 in cash to be withheld from use as security for the payment of gasoline taxes to the State of California, and still continue his operations as Receiver with any hope or prospect of success and the prompt payment of his receivership obligations both for gasoline taxes and for other purposes necessary in the operation of this receivership; and that any course of action whereby the Receiver is compelled to withdraw from his working capital said sum of $100,000.00 in cash, either as a deposit to be made with the State Treasurer of California or a deposit to be accumulated and maintained in a bank for the benefit of a surety corporation on the Receiver's bond, will be disastrous to the receivership and the objects and purposes thereof, particularly in that the Receiver will be unable after withdrawal of such working capital to acquire needed supplies for his operations at the best prices obtainable and necessary in competition with other producers of gasoline and will be otherwise unable [fol. 16] to get the many benefits obtainable only through use of an adequate working capital not depleted by withdrawal therefrom in said sum of $100,000.00 or any other substantial sum held on deposit or in a dead account as surety for the payment of gasoline taxes.

VIII

That if the Receiver is not permitted to continue his operations substantially in the manner in which the same have heretofore been carried on, or is compelled to pay or attempt to pay gasoline taxes before the due date thereof accruing as heretofore, or to pay penalties thereon of one hundred per cent or in any other substantial amount,

then and in such event the Receiver will be unable to operate without the loss, waste, destruction and dissipation of the assets of said receivership estate; and by reason thereof he will also be subjected to ruinous and impossible burdens preventing successful competition on his part with other producers and sellers of gasoline and motor fuel; and that by reason thereof he will also be unable to carry out and perform many existing contracts for the purchase and sale of gasoline and other petroleum products in both interstate and foreign commerce as well as in the State of California, all of which contracts and undertakings have been made with the consent and approval and under orders of this Court and are receivership liabilities. That if the Receiver is not permitted to continue with his operations, then and in such event the assets of such receivership [fol. 17] will be of little value and will have to be sold as salvage at a mere fraction of the value thereof while incorporated in and being a part of a going concern; and that all the objects and purposes of the receivership will be thereby frustrated and annulled.

Wherefore, the Receiver prays that the Court do issue to him its instructions setting forth and directing him either to proceed in the operation of said receivership without any bond for the payment of taxes to the State of California, or to cease operations and liquidate at the expiration of the existing bond on June 28, 1933, or to take such other course and do such other things as to the Court may seem meet and proper.

Dated this 7th day of June, 1933.

Robert C. Gillis, Receiver of Western Oil and Refining Company. Goudge, Robinson & Hughes, Ernest C. Carman, Attorneys for Receiver.

Duly sworn to by Robert C. Gillis. Jurat omitted in printing.

[fol. 18] [Exhibits A, B and C are omitted by stipulation.]

[File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF STATE OF CALIFORNIA TO "APPLICATION OF RECEIVER FOR INSTRUCTIONS"—Filed June 19, 1933

Comes now the State of California and for answer to the Receiver's application for instructions respectfully shows this Honorable Court as follows:

I

That the State of California is a preferred creditor of Western Oil and Refining Company in the sum of $330,875.63.

II

That the Receiver herein is a "distributor" of motor vehicle fuel as defined in the "Motor Vehicle Fuel Act" of the State of California (Statutes 1923, page 571, as amended), and by Section 2 of that act, as amended by [fol. 20] Statutes of 1931, page 105, effective March 30, 1931, said Receiver, as a condition to his being licensed by said State as a distributor of motor vehicle fuel, is required to give security to said State for the payment of gasoline taxes levied and assessed against him by the State Board of Equalization.

That by said statute security for the payment of such taxes may be furnished as follows:

(a) By furnishing a bond or bonds equivalent in total amount to twice his estimated monthly license tax, the Receiver being the Principal therein, and the surety being a corporation such as is mentioned in Section 1056 of the Code of Civil Procedure;

(b) By furnishing a like bond or bonds equivalent in total amount to twice his estimated weekly license tax;

(c) In lieu of such bond or bonds the Receiver may deposit with the State Treasurer, a like amount of lawful money of the United States;

(d) In lieu of bonds or cash the Receiver may deposit with the State Treasurer a like amount of bonds or other

obligations of the United States, the State of California, or of any county or city and county of the State.

III

The Receiver may pay his taxes weekly instead of monthly, and in that event the amount of the bond will be twice the estimated weekly tax.

IV

It is true that the Receiver has complied with the provisions of the Act and is not delinquent and has not been delinquent in the payment of any taxes assessed against him under this act.

[fol. 21] V

In Paragraph III of his petition herein the Receiver alleges that the Fidelity and Deposit Company of Maryland, surety on his bond, has given notice of withdrawal and that upon receipt of such notice the Receiver made application for bond to the National Surety Corporation, which application was rejected, and said Receiver further alleges:

"That thereafter the Receiver has made repeated efforts to procure a bond elsewhere, and to get other corporations qualified under Section 1056 of the Code of Civil Procedure of California to become surety on such bond of the Receiver, but that all such requests of the Receiver have been refused and the Receiver is advised and believes that no corporation qualified under Section 1056 of the Code of Civil Procedure of California will, or can be induced to, become surety on any bond of the Receiver to the State of California conditioned as provided in said above mentioned legislation of said State unless the Receiver shall have deposited with, and shall thereafter continuously keep on deposit with, such surety corporation an amount in cash equivalent to the penalty of such bond or shall withdraw from his working capital, from day to day, and deposit in a bank an amount of cash equal to the tax aforesaid of three cents per gallon upon his daily production of gasoline and shall not be at liberty to use the money so deposited in such bank either as working capital or for any other purpose pending the arrival of the due date for payment

of such gasoline taxes, as provided in said legislation of the State of California."

[fol. 22]

VI

Counsel for the State have been advised by the State Insurance Commissioner that there are seventy surety companies in this State authorized to write bonds for the Receiver herein, and that if any one of said companies cannot itself carry a liability of $100,000.00, it may, pursuant to Section 625-b of the Political Code, write a bond in that amount and re-insure a portion of the risk with other authorized companies.

VII

The showing so far made by the Receiver is insufficient to indicate that he is or will later be unable to furnish a bond or bonds as required by Section 2 of the Motor Vehicle Fuel Act, to replace the bond now on file with the State Board of Equalization.

Said showing is also insufficient in that it does not appear therefrom that the Receiver cannot arrange to pay the tax on a weekly instead of a monthly basis and thereby reduce the amount of the bond or bonds required to be filed by him.

VIII

No State officer or department is authorized to permit a distributor to engage in business as such without furnishing a bond or bonds in the required amount, or in lieu thereof of depositing cash or securities. That the State law does not require a distributor to indemnify the surety on his bond, and that if any such condition is imposed it is imposed by the surety company and not by the State. That the State is not concerned with or interested in the question of indemnifying the surety company. That if the State permitted the Receiver to operate without bond or without [fol. 23] depositing cash or collateral in lieu thereof it would be an act of discrimination against other distributors and in the event taxes lawfully levied and assessed against the Receiver were not paid the members of the State Board of Equalization might be subjected to individual liability for any loss suffered by the State.

IX

That in the opinion of counsel for the State the Receiver herein is subject to the provisions of the Motor Vehicle Fuel Act and is not relieved from compliance therewith because of the fact that he is operating pursuant to the order or direction of a Federal Court sitting in Equity.

See Michigan v. Michigan Trust Co., 286 U. S. 334.

That notwithstanding the foregoing the State of California desires to cooperate with this Honorable Court and with the Receiver herein in so far as it may do so without violating its own laws or subjecting its own officers to possible personal liability.

Wherefore, the State of California, as an interested party herein, prays that this Honorable Court make no order herein which will enable the Receiver herein to operate as a distributor of motor vehicle fuel otherwise than in conformity with said Motor Vehicle Fuel Act.

U. S. Webb, Attorney General; H. H. Linney, Deputy Attorney General, Attorneys for State of California.

[fol. 24] [File endorsement omitted.]

In United States District Court

[Title omitted]

Order Instructing Receiver of Western Oil and Refining Company Concerning Operations After Withdrawal of Surety Upon Bond Given to State of California for Payment of Gasoline Taxes—Filed June 26, 1933

Robert C. Gillis as Receiver of Western Oil and Refining Company, defendant in the above entitled action, heretofore filed in this Court, under date of June 7, 1933, his ap-[fol. 25] plication for instructions concerning the continuance of his operations as such Receiver after termination of a bond given by him as Receiver to the State of California for the payment of gasoline taxes, under the provisions of Chapter 267, page 571, Statutes and Amendments to the Codes of California 1923 as amended by Chapter

85, page 105, Statutes and Amendments to the Codes of California 1931 and Chapter 793, page 1652, Statutes and Amendments to the Codes of California 1931, and other amendments, altogether constituting the gasoline tax legislation of the State of California covering the assessment, levy and collection of all taxes imposed by said State upon gasoline or motor vehicle fuel produced in the State of California.

Said application of the Receiver for instructions was made upon all the files, records and proceedings in the above entitled action; and said application does set forth that at the commencement of the receivership on or about April 4, 1931 the Receiver, without disputing or contesting the provisions of said California gasoline tax legislation in any manner, did comply with certain provisions thereof whereby every person, firm, association or corporation engaged in the production of gasoline or motor vehicle fuel in the State of California was required as a condition precedent to such production to procure a license from the State Board of Equalization of California, which license such State Board was prohibited from issuing unless the applicant therefor did first produce and deliver a bond executed by the applicant as principal and by a corporation duly organized under Section 1056 of the Code of Civil Procedure of California as surety, payable to the [fol. 26] People of the State of California and conditioned upon faithful performance by the applicant of all requirements of such gasoline tax legislation and the payment of all gasoline or motor vehicle fuel taxes assessed or levied against the applicant under the provisions of said act; and that such bond was so furnished by said Receiver in the sum of One Hundred Thousand Dollars ($100,000.00) with Fidelity and Deposit Company of Maryland as surety thereon.

Said application of said Receiver for instructions does further set forth, in substance, that ever since the commencement of said receivership the Receiver has operated, under the directions of the Court and with such bond in force, and that during said time said Receiver has paid all gasoline taxes accruing to the State of California at or before the date when the same became due, which payments amounted in the aggregate to One Million Three Hundred Ninety Thousand Fifty-one and 33/100 Dollars

($1,390,051.33) up to the time of the filing of said Receiver's application for instructions; and that the assets of the receivership estate as a whole are substantially undiminished, have been improved in many respects, and the prospects for the continuance of payment by the Receiver of all such gasoline taxes accruing to the State of California are substantially as good as at any time in the past.

Said application of the Receiver for instructions does further set forth, in substance, that said Fidelity and Deposit Company of Maryland has given due notice and pursuant thereto will withdraw as surety on said bond on or about June 28, 1933; that ever since receipt of such notice said Receiver has made strenuous efforts to procure another surety upon his bond, or a new bond of the same [fol. 27] tenor to be substituted therefor, but that all such efforts of the Receiver have been unavailing, and all qualified surety corporations to which the Receiver has applied therefor have refused to write the same or to become surety thereon, and that the Receiver is wholly unable to procure any such bond with a corporate surety thereon qualified under the terms of said gasoline tax legislation of the State of California.

Said application of the Receiver for instructions does further set forth, in substance, that the amount of cash and working capital of the Receiver is insufficient to permit a withdrawal of the sum of $100,000.00, or any other substantial sum, and the deposit of such sum (or the purchase of government, state or municipal bonds therewith for deposit) with the Treasurer of the State of California as security for the payment of gasoline taxes to accrue against the Receiver, in accordance with other provisions of said gasoline tax legislation for such substitution of cash or securities in lieu of such bond; and that the setting aside or withdrawal of working capital or current assets from the receivership estate as security for the payment of such gasoline taxes to accrue would seriously impede, and very likely would render impossible the continued operations of the Receiver for the preservation of assets of the receivership estate and the contemplated ultimate reorganization of Western Oil and Refining Company or the sale or merger thereof as a going concern, and the lifting of the receivership, in accordance with the purposes for which such Receiver was appointed and up to this time has operated.

Said application of said Receiver for instructions does further set forth that, upon the happening of the fore-
[fol. 28] going events, the Receiver through his counsel communicated by letter with Honorable Ray L. Riley, Controller of the State of California setting forth the inability of the Receiver to procure the execution of any such bond by a corporate surety duly authorized, and his inability otherwise to comply with such provisions of said gasoline tax legislation of the State of California in respect to the giving of security for payment of gasoline taxes, and his suggestion that said State Controller charged with the duty of collecting such gasoline taxes should indicate his acquiescence in the continuance of operations by the Receiver after the withdrawal of said Fidelity and Deposit Company of Maryland as surety on his bond in the same manner as before such withdrawal; that such communication was referred by said State Controller to the State Board of Equalization and that said State Board of Equalization made reply thereto, declining to adopt or follow the suggestions of said Receiver and asserting that the Receiver must not operate in the State of California after the withdrawal of such surety from his bond or without continually keeping in force a similar bond with a like qualified surety thereon; that said communication from said State Board of Equalization was accompanied by an opinion from the Attorney General of California supporting the same; and that true and correct copies of said correspondence and of said opinion by the Attorney General of California are attached to said Receiver's application for instructions as Exhibits A, B, and C, respectively.

Said application of the Receiver for instructions does further set forth other and additional details to which reference is hereby made for further particulars.

[fol. 29] The Court directed said application of the Receiver for instructions to be set down for hearing in open court on June 19, 1933 at two o'clock P. M.

Due proof by affidavit was thereafter filed with the Court showing that written notice of such hearing and true and correct copies of said application of said Receiver for instructions were mailed at Los Angeles, California, on June 9, 1933 to said State Board of Equalization and to the State Controller of California and the Attorney General of California at Sacramento, California, and that thereafter and

on June 13, 1933 there was similarly mailed to all of said parties true and correct copies of a memorandum of authorities and suggestions to the Court by counsel for the Receiver concerning said application for instructions, which memorandum and suggestions was thereafter duly filed with the Court.

Said matter came on for hearing on June 19, 1933 at a session of this Court held in the Federal Building, Temple and Main Streets, Los Angeles, California. At said hearing the State of California appeared by and through its Attorney General, Honorable U. S. Webb, (acting by his Deputy, Honorable H. H. Linney) and said State of California then and there filed its answer to said Receiver's application for instructions, setting forth in said answer the provisions in substance of said California gasoline tax legislation; admitting that said Receiver has complied with the provisions of said act and has paid all taxes accruing thereunder from the beginning of the receivership to date; but denying that the Receiver is unable to produce another duly qualified surety to be substituted for said Fidelity and [fol. 30] Deposit Company of Maryland on said bond of said Receiver; and denying the existence of any facts, or that any facts could exist, justifying said Receiver in operating as a producer or distributor of gasoline or motor vehicle fuel in the State of California without the giving of such bond and the keeping of the same continuously in force, and without a license from said State Board of Equalization, while such operations are being had. Said Attorney General of California also filed, along with said answer to such application of the Receiver for instructions, a memorandum of points and authorities on behalf of the State of California and in support of its said answer.

Thereupon evidence was taken by the Court relating to the issues made by said application of the Receiver for instructions and said answer thereto; and argument was had by counsel for the Receiver and counsel for the State of California.

The Court being fully advised now finds, upon such evidence and upon all the files, records and proceedings in the above entitled action, that the allegations of the Receiver set forth in his said application for instructions dated June 7, 1933, and now remaining on file with this Court, are true and correct.

The Court further finds that the production, distribution and sale of gasoline and motor vehicle fuel in the State of California by said Receiver has been and now is absolutely necessary and vital to, and the principal activity in, the operations of said Receiver and will continue so to be until the termination of said receivership, which heretofore has been extended by order of this Court to December 31st, 1933 [fol. 31] or until further order relating thereto be made; that cessation of such production, distribution and sale of gasoline and motor vehicle fuel by said Receiver cannot be permitted without termination of said receivership, and that no facts appear to justify the Court in terminating said receivership or modifying the orders heretofore made for its continuance; that the State of California will not be subjected to any unreasonable hazard or danger of loss from a continuance of said receivership without bond or other security given by said Receiver for payment of gasoline taxes to said State but with the payment of such gasoline taxes hereafter accruing from the operations of said Receiver to be made at the corresponding times and in the same manner in which such taxes have been paid since the inception of the receivership; and that the purposes and objects of the receivership cannot otherwise be accomplished.

Now therefore, it is ordered that Robert C. Gillis as Receiver of Western Oil and Refining Company, defendant in the above entitled action, be and he is hereby directed, instructed and ordered to continue his operations as such Receiver (including the production, distribution and sale of gasoline or motor vehicle fuel in the State of California) after termination of the hereinbefore mentioned bond, or withdrawal therefrom of the surety thereon, for the payment of gasoline taxes by said Receiver to the State of California; that such operations be continued by said Receiver until the further order of the Court without any such bond or the giving of security in any other manner for the [fol. 32] payment of such gasoline taxes and without any license from the Board of Equalization of the State of California or from any other agency, officer or authority of said State; that during the continuance of such operations said Receiver do pay to said State of California all taxes hereafter accruing upon or against gasoline or motor vehicle fuel produced by said Receiver in California, and that

such payment of said taxes be made at the corresponding times and in the same manner that like taxes heretofore have been paid by said Receiver while operating under the hereinbefore mentioned bond of one hundred thousand dollars during the past period of said receivership, which is to say specifically that the amount of such taxes accruing for each calendar month hereafter shall be paid by said Receiver on or before the first day of the second calendar month thereafter and prior to five o'clock in the afternoon of said day; and that said Receiver do comply with the provisions of said gasoline tax laws of the State of California excepting only as hereinabove ordered otherwise.

Dated this 26th day of June, 1933.

Paul J. McCormick, Judge.

[File endorsement omitted.]

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed July 24, 1933

To the Honorable Paul J. McCormick, Judge of the United States District Court, Southern District of California, Central Division:

The State of California—Respondent and Appellant herein, having been brought into this cause by service of Notice of Hearing of the Receiver's Petition for Instructions, dated June 9, 1933, and having appeared herein and filed an answer to said Petition for Instructions, and the [fol. 34] matter having come on for hearing by the above entitled court on the 19th day of June, 1933, and the court having made and entered its order on the 26th day of June, 1933,—feeling itself aggrieved by said Order, does hereby appeal from said Order to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, for the reasons set forth in the Assignment of Errors filed herewith, and Appellant prays that its plea be allowed and that citation be issued, as provided by law, and that a transcript of the record, proceedings and documents upon which

said Order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such court in such case made and provided.

And appellant further prays that all further proceedings be suspended, stayed and superseded until the determination of said appeal by said United States Circuit Court of Appeals for the Ninth Circuit, and that if bond be required of appellant herein the proper order relating to and fixing the amount thereof be made.

Dated July 20, 1933.

U. S. Webb, Attorney General of the State of California; H. H. Linney, Deputy Attorney General, Attorneys for the State of California, Respondent and Appellant herein.

[fol. 35] [File endorsement omitted.]

In United States District Court

[Title omitted]

Assignment of Errors—Filed July 24, 1933

Comes now the State of California, Respondent and Appellant herein, and contends that in the Order made and entered by the above entitled Court on the 26th day of [fol. 36] June, 1933, there is manifest and material error, and in connection with and as a part of its appeal herein makes and files its Assignments of Errors upon which it will rely in the prosecution of its appeal in said cause.

I

That the United States District Court for the Southern District of California, Central Division, had no jurisdiction, power or authority to make and enter the Order herein complained of.

II

That said Court erred in holding, as set forth in said order, that the State of California will not be subjected to

any unreasonable hazard or danger of loss from a continuance of the receivership herein without bond or other security given by said Receiver for payment of gasoline taxes to said State.

III

That said Court erred in directing, instructing and ordering said Receiver to continue his operations as Receiver of Western Oil and Refining Company, a corporation, (including the production, distribution and sale of gasoline or motor vehicle fuel in the State of California) after termination of the Receiver's bond for payment of taxes by said Receiver to said State, or after withdrawal of the surety on said bond.

IV

That said Court erred in directing, instructing and ordering said Receiver to continue his said operations until the further order of the Court without any such bond or the giving of security in any other manner for the payment of such gasoline taxes.

[fol. 37]

V

That said Court erred in directing, instructing and ordering said Receiver to continue his said operations without first obtaining a license therefor from the State Board of Equalization of the State of California, or from any other agency, officer or authority of said State.

VI

That said Court erred in directing, instructing and ordering said Receiver to continue his said operations without complying with the laws of the State of California, and in subordinating said laws to the jurisdiction, authority and control of said court, in so far as said laws require said Receiver to obtain a license from said State Board of Equalization and to give bond or other security for the payment of gasoline taxes to the State of California.

Wherefore, the State of California, appellant herein, prays that said order be reversed and that an order be entered reversing the order and judgment of said District Court, and requiring said Receiver to comply with the laws of the State of California in the particulars hereinabove

mentioned and referred to, and for such other and further order in the premises as may be meet and proper.

Dated July 20, 1933.

U. S. Webb, Attorney General of the State of California; H. H. Linney, Deputy Attorney General, Attorneys for State of California.

[fol. 38] [File endorsement omitted.]

In United States District Court

In Equity. No. T-89-M

Olaf Halvorson, Complainant,

vs.

Western Oil and Refining Company, a Corporation, Defendant,

State of Calfornia, Respondent and Appellant

Order Allowing Appeal—Filed July 25, 1933

Upon motion of U. S. Webb, Attorney General of the State of California, and H. H. Linney, Deputy Attorney General, attorneys, for the State of California, Respondent [fol. 39] and Appellant herein, and upon the filing by said State of its Petition for Appeal herein—

It is ordered that an appeal be and it is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the Order and Judgment entered herein on the 26th day of June, 1933, in favor of the Receiver of Western Oil and Refining Company, a corporation, and that the amount of the cost bond as required by law on said appeal be and the same is hereby fixed at the sum of Two hundred and fifty Dollars ($250.00).

Dated July 25th, 1933.

Paul J. McCormick, United States District Judge.

[File endorsement omitted.]

[fols. 40-42] Bond on Appeal for $250.00, approved and filed July 28, 1933, omitted in printing.

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION IN LIEU OF PRÆCIPE FOR PREPARATION OF TRANSCRIPT OF RECORD ON APPEAL—Filed July 26, 1933

To the Clerk of the above entitled Court:

You will please prepare a transcript of the record on appeal in the above entitled cause including therein the following portion of the record therein and omitting all other portions of said record.

1. Application of Receiver for Instructions, dated June 7th, 1933, omitting Exhibits A, B and C;
2. Answer of the State of California to "Application of Receiver for Instructions";
3. Order of the Court, dated June 26, 1933;
[fol. 44] 4. Petition for Appeal;
5. Assignment of Errors;
6. Order Allowing Appeal;
7. Bond on Appeal, if any;
8. Citation on Appeal;
9. Certificate of Clerk to Transcript of Record.

Dated July 20, 1933.

U. S. Webb, Attorney General; H. H. Linney, Deputy Attorney General, Attorneys for State of California.

We, the undersigned attorneys for the Receiver herein hereby stipulate and agree that the foregoing shall constitute the Transcript of Record hereon on this appeal.

Goudge, Robinson & Hughes; Ernest C. Carman, Attorneys for Robert C. Gillis, as Receiver of Western Oil and Refining Company.

[File endorsement omitted.]

In the District Court of the United States, Southern District of California, Central Division

OLAF HALVORSON,

Complainant,

vs.

WESTERN OIL AND REFINING COMPANY, a corporation,

Defendant,

STATE OF CALIFORNIA,

Respondent and Appellant.

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 44 pages, numbered from 1 to 44 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; application of receiver for instructions concerning operation after termination of bond given by receiver to State of California for payment of gasoline taxes, with Exhibits A, B, and C omitted therefrom; answer of State of California to application of receiver for instructions; order instructing receiver of Western Oil and Refining Company concerning operations after withdrawal of surety upon bond given to the State of California for pay-

ment of gasoline taxes; petition for appeal; assignment of errors; order allowing appeal; bond on appeal, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is $56.17 and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to $7.10 and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this 15th day of September, in the year of Our Lord One Thousand Nine Hundred and Thirty-three and of our Independence the One Hundred and Fifty-eighth.

[Seal] R. S. ZIMMERMAN,
Clerk of the District Court of the United States of America, in and for the Southern District of California.

By EDMUND L. SMITH,
Deputy.

No. 7286

United States

Circuit Court of Appeals

For the Ninth Circuit.

STATE OF CALIFORNIA,

Appellant,

vs.

ROBERT C. GILLIS, as Receiver of Western Oil and Refining Corporation,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated Term, to wit, the October Term, A. D. 1933 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the fifteenth day of February in the year of our Lord One Thousand Nine Hundred and thirty-four.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable FRANCIS A. GARRECHT, Circuit Judge.

No. 7286

STATE OF CALIFORNIA,

Appellant,

vs.

ROBERT C. GILLIS, as Receiver of Western Oil and Refining Corporation,

Appellee.

ORDER OF SUBMISSION

ORDERED appeal in above cause argued by Mr. H. H. Linney, Deputy Attorney General of California, counsel for appellant, and by Mr. Ernest C. Carman, counsel for appellee, and submitted to the court for consideration and decision.

At a stated Term, to wit, the October Term, A. D. 1933 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the nineteenth day of March in the year of our Lord One Thousand Nine Hundred and thirty-four.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable FRANK H. NORCROSS, District Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the court, ORDERED that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before: WILBUR, SAWTELLE and GARRECHT, Circuit Judges.

SAWTELLE, Circuit Judge:

This is an appeal from an order of the District Court permitting the receiver of the Western Oil and Refining Company to continue to operate the business of said oil company without posting bond, or other security, to guarantee to the State of California the payment of all license taxes, penalties and other obligations (as required by the Motor Vehicle Fuel Act of 1923, as amended by §2 of the Act of 1931; 1931 Statutes of California, p. 105), and without securing from the California State Board of Equalization a license to operate the business of said oil company, as required by the aforementioned act.

The act in question defines the word "distributor", as used therein, as "every person, firm, association or corporation who refines, manufactures, produces or compounds motor vehicle fuel in this state and sells the same in this state"; and provides that: "Every distributor before April 1, 1931, and after this act becomes effective every person, firm, association or corporation before becoming a distributor shall make an application to the state board

of equalization for a license authorizing such distributor * * * to engage in business as a distributor. It shall be unlawful * * * to be a distributor without first securing from the state board of equalization a license for which provision is made in this section. Before granting any license * * * to engage in business as a distributor, the state board of equalization must require such person, firm, association or corporation to file with said board * * * a bond duly executed by such person, firm, association or corporation as principal and a corporation such as is mentioned in section 1056 of the Code of Civil Procedure of this state, as surety, payable to the people of the State of California, conditioned upon faithful performance of all of the requirements of this act and expressly providing for the payment of all license taxes, penalties and other obligations of such person, firm, association or corporation arising out of this act". The license tax imposed by the act is three (3) cents per gallon of gasoline distributed and sold in California and is payable only by the distributor.

It appears that after the effective date of the amendment to the act requiring the giving of a bond a receiver was appointed for the Western Oil and Refining Company, and the receiver thereafter executed the required bond, procured a license as a distributor from the State Board of Equalization, and continued the operation of the oil company's business, paying the tax as it fell due.

June 7, 1933, the receiver filed in the District Court a pleading entitled "Application of receiver for instructions concerning operation after termination of bond given by receiver to State of California for payment of gasoline taxes", in which the receiver stated that he had been informed by the surety on his bond to the State that said surety would withdraw therefrom as of June 28, 1933, and that he had made efforts to secure a bond from another surety company, but without success, and had not been able to find any surety company that would write said bond and did not believe a bond could be obtained; "Wherefore, the receiver prays the Court do issue to him its instructions setting forth and directing him either to proceed in the operation of said receivership without any bond for the payment of taxes to the State of California, or to cease operations and liquidate at the expiration of the existing bond on June 28, 1933, or to take such other course and do such other things as to the Court may seem meet and proper."

The Attorney General of the State of California, as counsel for the State of California, the State Controller, and the State Board of Equalization filed an answer to the application of the receiver questioning the power and jurisdiction of the District Court to make an order permitting the receiver to operate the business of the corporation without a license from the State Board and without giving a bond as required by the act.

As above stated, the court made an order authorizing and directing the receiver to operate the said

business without procuring a license from the State Board and without giving a bond or other security.

Appellant contends "that a District Court of the United States is without power or jurisdiction to order a Federal equity receiver to disregard valid State laws or to operate the business of a corporation contrary to and in violation of the laws of the State in which the business is carried on".

We are of opinion that the contention of appellant is correct and must be sustained.

Section 65 of the Judicial Code (28 U. S. C. A. §124) provides:

> "Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall willfully violate any provision of this section shall be fined not more than $3,000 or imprisoned not more than one year, or both."

The statute (Section 65), is plain and emphatic, and we cannot read into it any exception which would permit a receiver to ignore or refuse to comply with its mandate. The legislature of the State, as it had the right and power to do, determined that a bond should be given or a deposit made by

distributors manufacturing and selling motor vehicle fuel in the State, to secure the payment of the tax. The act not being in conflict with any provision of the Federal or State Constitutions should be enforced. The reasons for the enactment of such legislation are obvious, and the collection of the State's revenue should not be impeded. It may well be that the court, in the instant case, will guard the rights of the State and order the payment in full by the receiver of all taxes in accordance with the act in advance of the payment of all costs and expenses of administration of the receivership. Nevertheless, the fact remains that the policy and purposes of the State are being thwarted. If the receiver in the instance case may carry on the business of the corporation without complying with the State law, other receivers appointed by Federal courts may do likewise; and considering the number of "friendly receiverships" which find their way into the Federal courts, it is easy to foresee the consequences.

We realize, of course, that the learned judge who entered the order in question was actuated by a desire to promote the interest of the estate. But compliance by a receiver with the state statute is a condition precedent to his right to engage in the business referred to; and if the receiver cannot comply therewith we think the estate should be liquidated and the receivership closed.

We are not at liberty to inquire into the reasons or the motives of the legislature; we can only examine into its power under the Constitution. And we

think we may assume, until the contrary is shown, that the facts within the knowledge of the legislature warranted it in enacting the statute. It seems to have acted within constitutional limiations, and that being so there is no ground for interference.

In the case of *Sterling v. Constantin,* 287 U. S. 378, the court, although discussing an entirely different question, used language which we think is apposite here, as follows:

> "In the performance of its essential function in promoting the security and well being of its people, the state must of necessity enjoy broad discretion. The range of that discretion accords with the subject of its exercise."

Order reversed.

(Endorsed): Opinion. Filed Mar. 19, 1934. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 7286

STATE OF CALIFORNIA,

Appellant,

vs.

ROBERT C. GILLIS, as Receiver of Western Oil and Refining Co.,

Appellee.

JUDGMENT

UPON APPEAL from the District Court of the United States for the Southern District of California, Central Division

THIS CAUSE came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the said District Court in this cause be, and hereby is reversed, with costs in favor of the appellant and against the appellee.

IT IS FURTHER ORDERED AND ADJUDGED by this Court that the appellant recover against the appellee for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered March 19, 1934. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Mr. Robert C. Gillis, as Receiver, appellee, and Messrs. Goudge, Robinson & Hughes and Ernest C. Carman, counsel for the appellee, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including May 15, 1934; and in the event the petition for a writ of certiorari to be made by the appellee herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of

this Court is to be stayed until after the said Supreme Court passes upon the said petition.

CURTIS D. WILBUR
United States Circuit Judge.

Dated: San Francisco, California, April 2, 1934.

[Endorsed]: Filed Apr 2 1934 Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
Ninth Circuit

In Equity No. 7286

OLAF HALVORSON,

Complainant,

vs.

WESTERN OIL AND REFINING COMPANY, a corporation,

Defendant.

STATE OF CALIFORNIA,

Appellant,

vs.

ROBERT C. GILLIS, as Receiver of Western Oil and Refining Company,

Respondent.

APPLICATION FOR STAY OF MANDATE

Comes now ROBERT C. GILLIS as Receiver of Western Oil and Refining Company, Respondent in

the above entitled proceeding, and applies to this court for a stay of issuance of mandate from this court to the District Court of the United States for the Southern District of California, Central Division, pursuant to the decision of this court rendered March 19th, 1934 reversing an order of said District Court which instructed this Receiver to operate for conservation of assets notwithstanding his inability to give surety bond or deposit cash or collateral with the State of California in the sum of $100,000.00 to insure payment of gasoline taxes to accrue under the laws of said State.

And, in support of his application for such stay, said Receiver alleges that he intends to apply to the Supreme Court of the United States, under advice of his counsel and in due course, for a writ of certiorari directed to this court in the usual form for the purpose of having said decision of this court reviewed by said Supreme Court of the United States to the end that the novel and important questions of law involved in said decision may be finally determined in said court of last resort; that he has paid all gasoline taxes heretofore accrued against him as Receiver and will be able to continue so to pay such taxes, as he verily believes, during the pendency and disposal of his said contemplated petition to the Supreme Court of the United States for such writ of certiorari; that, on the contrary, if stay of issuance of mandate by this court is not granted as herein requested, this Receiver in all probability will be wholly unable to operate after mandate from this court reaches said District Court and, as a re-

sult, his distribution constituting the most valuable of the receivership assets will be lost, his employees thrown out of employment, and the assets of said receivership estate will be otherwise sacrificed before it can be determined in said certiorari proceedings whether the Supreme Court of the United States will approve or disapprove said decision of this Court rendered herein on March 19th, 1934 as aforesaid.

Wherefore, the undersigned Receiver prays that this court make its order staying the issuance of mandate to said District Court until application can be made to the Supreme Court for writ of certiorari, and until disposal of such application therein, and that he have such other and further relief in the premises as to this court may seem appropriate.

Dated this 28th day of March, 1934.

ROBERT C. GILLIS

Receiver of Western Oil and Refining Company, Respondent above named.

GOUDGE, ROBINSON & HUGHES

and

ERNEST C. CARMAN

Attorneys for said Receiver.

State of California
County of Los Angeles—ss.

ROBERT C. GILLIS, being first duly sworn according to law, on oath says:

That he is the duly appointed, qualified and acting Receiver of Western Oil and Refining Company,

defendant in the above entitled action, and the Respondent herein; that he has read the foregoing APPLICATION FOR STAY OF MANDATE and knows the contents thereof; and that the same is true to the best of his information and belief.

ROBERT C. GILLIS

Subscribed and sworn to before me this 30th day of March, 1934.

[Seal] CHAS. M. FUELLER

Notary Public in and for the County of Los Angeles, State of California.

My commission expires October 21, 1935.

[Endorsed]: Filed Apr. 2, 1934. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Cause and Number.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-one (61) pages, numbered from and including 1 to and including 61, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of April A. D. 1934.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 63] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 28, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is assigned for argument on Monday, October 8th next, after the cases heretofore assigned for that day.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,597. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 28. Robert C. Gillis, as Receiver of Western Oil and Refining Company, Petitioner, vs. State of California. Petition for a writ of certiorari and exhibit thereto. Filed April 27, 1934. File No. 28, O. T., 1933.

(5113-C)